

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

JOSHUA BROOKS

Plaintiff,

V.

SERTA SIMMONS BEDDING, LLC

Defendant.

Case No. 4:22-CV-01203-JAR

Case No. 4:24-cv-00097-MTS

JOINT MOTION TO LIFT STAY
AND REQUEST FOR TELEPHONE STATUS CONFERENCE

On January 26, 2023, Case No. 4:22-cv-01203-JAR was “STAYED during the pendency of Defendant's bankruptcy proceeding.” DKT. 20. Pursuant to that Order, “within ten days of the termination of bankruptcy proceedings or Plaintiff receiving relief from the automatic stay, the parties shall notify the Court thereof.” *Id.*

On December 15, 2023, Plaintiff commenced a second action in the Circuit Court of St. Charles County, State of Missouri, which was removed on January 18, 2024, and assigned Case No. 4:24-cv-00097-MTS.

On September 3, 2024, Defendant filed a Motion to Consolidate Case No. 4:24-cv-00097-MTS into Case No. 4:22-cv-01203-JAR, which was granted on September 18, 2024. DKT. 29. In its Memorandum and Order, the Court denied without prejudice Defendant’s Motion to Dismiss, and stated that “Defendant may refile its motion once the stay is lifted.” DKT. 29.

On December 10, 2024, United States Bankruptcy Judge Christopher Lopez, entered an agreed “Stipulation and Order Granting Joshua Brooks Limited Relief from the Plan Injunction,” which provided, in pertinent part, Plaintiff Josh Brooks relief from the Bankruptcy Plan Injunction and associated Stay, permitting him to continue the prosecution of Case No. 4:22-CV-01203-JAR. A copy of that Order is attached as **Exhibit A**.

Accordingly, the Stay of Case No. 4:22-CV-01203-JAR should be lifted, and Defendant’s response to Plaintiff’s First Amended Complaint will become due.

Plaintiff contends that if Defendant intends to file a Motion to Dismiss in response to Plaintiff’s First Amended Complaint, that Defendant’s prior Motion in response to Plaintiff’s First Amended Complaint should be Ordered as re-filed by the Court. Plaintiff contends that the Motion is fully briefed, ripe for decision, and that this approach best serves the Court’s and Parties’ resources. If Defendant intends to file an Answer, Plaintiff consents to 21 days from the date the Stay of this matter is lifted.

Defendant requests 21 days from the date the Stay of this matter is lifted to file a response to Plaintiff’s First Amended Complaint. Defendant’s prior Motion to Dismiss was filed over two years ago. The arguments in the Motion were based on then-existing case law that may have changed since initial briefing. Defendant requests 21 days, rather than simply re-filing the prior Motion, so that it can ensure that it meets its duty of candor to the Court and submit legal arguments based on accurate representations of law.

Because of the Parties’ impasse on this issue and direction regarding the prosecution of this case in light of the consolidation and this Motion, the Parties respectfully request a telephone conference with the Court, so the Parties may obtain direction regarding the prosecution of this case.

WHEREFORE, Plaintiff Josh Brooks and Defendant Serta Simmons Bedding, LLC, respectfully request that: (1) this Motion to Lift Stay be GRANTED; (2) the Stay of Case No. 4:22-CV-01203-JAR be lifted; (3) Case No. 4:22-CV-01203-JAR be administratively re-opened; and (4) a telephone status conference with the Court be set, so that the Parties may obtain direction regarding the prosecution of this case.

Respectfully submitted,

**HKM EMPLOYMENT ATTORNEYS
LLP**

By: /s/ S. Cody Reinberg
S. Cody Reinberg, Mo. Bar #66174
Jeffrey D. Hackney, Mo Bar #53158
7382 Pershing Ave., 1W
St. Louis, MO 63130
314-391-9557 p/f
creinberg@hkm.com
jhackney@hkm.com

Attorneys for Plaintiff Josh Brooks

**ELARBEE THOMPSON SAPP &
WILSON LLP**

By: /s/ Timothy J. Holdsworth
Timothy J. Holdsworth # 730986 GA
Admitted Pro Hac Vice
Shannon L. Smith # 487478 GA
Admitted Pro Hac Vice
800 International Tower
229 Peachtree Street, N.E.
Atlanta, Georgia 30303
tel: (404) 659-6700
fax: (404) 222-9718
holdsworth@elarbeethompson.com
smith@elarbeethompson.com

MCMAHON BERGER, P.C.

By: /s/ Kevin J. Lorenz
Kevin J. Lorenz # 31707 MO
2730 North Ballas Rd., Suite 200
P.O. Box 31901
St. Louis, MO 63131-3039
(314) 567-7350
(314) 567-5968 (fax)
lorenz@mcmahonberger.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2024, I electronically filed the above pleading with the Clerk of the Court by using the electronic filing system, which will send notification to all counsel of record.

/s/ S. Cody Reinberg
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